

From: Michelle Berditschevsky <shastamedicine@snowcrest.net>
To: <docket@energy.state.ca.us>
Date: 2/8/04 11:42PM
Subject: Re: Comments on draft RPS Guidelines/attachment

California Energy Commission
Docket No. 03-RPS-1078 & Docket No. 92-REN-1038
Docket Unit MS-4

Dear Commissioners:

Here below I am pasting in the original letter by the Native Coalition for Medicine Lake Highlands Defense. It was attached to our previous email but I am concerned that the attachment was not picked up. Thank you for your consideration of these comments. We will look for them on your website.

NATIVE COALITION
for MEDICINE LAKE HIGHLANDS DEFENSE
211 East Alma Street o Mount Shasta, CA 96067 o Phone & Fax 530/926-3397
email: shastamedicine@snowcrest.net

VIA U.S. MAIL and ELECTRONIC MAIL
November 10, 2003
California Energy Commission
Docket No 03-RPS-1078
Docket Unit MS-4
1516 Ninth Street
Sacramento, CA 95814-5504
docket@energy.state.ca.us;

Center for Resource Solutions
Attn. Matthew Lehman
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PO Box 29512
San Francisco, CA 94129
mlehman@resource-solutions.org
jhg@cpuc.ca.gov

Re: Docket No. 03-RPS-1078 RPS Proceeding – Implementation of
Renewables Portfolio Standard Legislation, Public Utilities Code
Sections 381, 383.5, 399.11 through 399.15, and 445; SB 1038, SB 1078

Members of the California Energy Commission and Mr. Lehrman:

The Native Coalition for Medicine Lake Highlands Defense (Native Coalition) writes this letter in response to the above Implementation Sections for Renewables Portfolio Standard Legislation.

The Native Coalition, which represents Tribes and Native American traditionalists in northern California, has a mission to defend sacred lands. Our mission prompts us to have concerns and specific

recommendations regarding these proposed implementation sections. The Native Coalition has previously participated in numerous hearings relative to CEC actions that would impact Native American spiritual and cultural sites in the sacred Medicine Lake Highlands. We include by reference all previous comments made to the CEC, and especially the July 10, 2003 letter by Earthjustice Legal Defense Fund written on our behalf and addressed to Ms. Darcy Houcks.

We have learned that at the October 8, 2003 CEC Business Meeting, the California Energy Commissioners adopted the Final Committee Report (Pub No 500-03-049FD), Phase II Implementation Issues. The RPS Phase II implementation issues concern the certification of renewable electricity generation facilities as well as the distribution of supplemental energy payments and the development of an accounting system for the for the Renewable Portfolio Standard.

However, the CEC deferred key decisions on the RPS issue because of the potential for irreversible impacts to minority and low-income populations, especially Native American cultures and their sacred lands. The decisions of how the RPS will be implemented will determine which projects will be certified, which projects will receive substantial financial support, and thus which energy projects receive renewable credits and power contracts to meet the RPS.

The Native Coalition therefore insists on the need to give Native Americans a role in the process of determining whether projects that are being considered for certification will have unmitigable impacts on cultural resources, sacred lands, as well as environmental justice impacts that cannot be mitigated. We are concerned that cultural and environmental justice concerns could be brushed aside in an effort to achieve an RPS standard at all costs. However, this is not necessary as sufficient projects are being proposed to give the CEC ample opportunity for discretionary decisions. In order to guide these discretionary decisions, we strongly urge the responsible agencies to include provisions and criteria that support Native Americans and all minority and/or low-income populations in the protection of cultural ways and sacred lands. These decisions are serious, as they will determine whether Native Americans are free to practice their land-based religion.

With regard to the issue of Eligibility, we request giving preferential support for projects with tangible benefits to Native American, minority and low-income populations in the implementation of PUC Code 383.5. Certification criteria must consider issues of environmental justice, discrimination as defined by Title VI of the Civil Rights Act, and religious freedom.

The Phase II Report outlined certification criteria that did not provide a preference for those renewable projects which would benefit minority populations. The CEC deferred this very important decision. Although the Report deemed it important to include other RPS certification criteria for projects, its avoidance of this issue can be seen as a silent approval to those renewable projects that have documented Environmental Justice impacts. (See Publication 500 03 049 at page 2: "the Committee has deferred consideration of the issue of whether it should provide

preference to projects that provide tangible benefits to communities with a plurality of minority or low-income populations.")

We believe that the RPS standards should provide preferential support to projects that have a documented tangible benefits to communities with a plurality of minority or low-income populations, which means that the projects are void of Environmental Justice Impacts. We strongly ask for your support of renewable projects that do not destroy sacred lands or sacred sites of minority and low income populations; a position which would indicate that those in decision-making positions are not discriminating against this population.

The California Energy Commission is well aware of two controversial geothermal projects that have documented Environmental Justice impacts that cannot be mitigated. The Fourmile Hill and the Telephone Flat Geothermal Development Projects in the sacred Medicine Lake both have documented disproportionate impacts to Native Americans, resulting in an Environmental Justice Impact. These two geothermal projects are proposed by Calpine Corporation, which was noticed and attended the Workshops on RPS implementation. The affected Pit River Tribe and the Native Coalition for Medicine Lake Highlands Defense were not noticed, despite their longstanding communications with the CEC on funding awards and solicitations.

The CEC has a legal provision [SB 1078 and SB 1038 codified in Public Utilities Code 383.5] that would allow the CEC to implement guidelines for projects that support minority and low-income populations. Nonetheless, the California Energy Commission is backing-away from such decisions. We consider this to be discriminatory, because the CEC is acting in full knowledge of the consequences of not implementing the above-mentioned guidelines. If this needs to be spelled out,

PAGE 2 OF 3

the consequences are that projects, such as Calpine's two geothermal projects at the sacred Medicine Lake Highlands, could be funded and certified despite the significant and disproportionate impacts to a minority low-income population, the Native Americans.[footnote 1, below] Knowing this, the CEC cannot claim that impacts to sacred sites are merely incidental to a project. If the CEC does not implement these guidelines, it would be acting in a discriminatory manner and be subject to a Title VI complaint under the Civil Rights Act.

It is clear that the proposed sections stand to impact Native American sacred sites, as well as other minority populations, in serious ways. We therefore appreciate your consideration of these comments. We request a copy of the full set of responses to this Data Request and to receive all further Notices regarding the subject.

Respectfully,
Michelle Berditshevsky

Michelle Berditshevsky

Executive Secretary

cc: Deborah Sivas, Esq.
Pit River Tribe
Shasta Tribe
Klamath/Modoc Tribe
California Council of Tribal Governments
Intertribal Council of California
Seventh Generation
Governor Gray Davis
Mary Nichols
Department of Energy

Footnote 1: See July 10, 2003 letter from EarthJustice to Darcy Houcks, CEC legal council as well as numerous transcripts and written comments over the years from the Native Coalition of Medicine Lake Highlands Defense, the Pit River Tribe, and the Mount Shasta Bioregional Ecology Center on numerous CEC funding solicitations.

Michelle Berditshevsky wrote:

> California Energy Commission
> Docket No. 03-RPS-1078 & Docket No. 92-REN-1038
> Docket Unit MS-4
>
> Dear Commissioners:
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> The Native Coalition for Medicine Lake Highlands Defense resubmits the
> attached comments of November 10, 2004, which are still valid comments
> on the proposed draft guidelines for implementing the Renewables
> Portfolio Standard (RPS). To our knowledge, our comments have not been
> considered by the CEC on this matter.
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> Please include these comments, including the attachment, in the record
> as they are timely submitted by the February 9, 2004 deadline.
>
> We reiterate that projects that have an Environmental Justice impact
> should not be certified under the RPS Guidelines. Projects that benefit
> minority populations should be prioritized.
>
> Very truly yours,
>
> Michelle Berditshevsky, Executive Secretary
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